

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Clear Fork Pipeline Company

Docket No. CP03-295-000

DECLARATORY ORDER DISCLAIMING JURISDICTION

(Issued September 17, 2003)

1. On May 9, 2003, Clear Fork Pipeline Company (Clear Fork) filed a petition, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure,¹ requesting that the Commission declare that the primary function of the 5.3-mile Silver Tip Lateral is gathering natural gas and that the facility therefore is exempt from the Commission's jurisdiction, pursuant to Section 1(b) of the Natural Gas Act (NGA). For the reasons discussed below, the Commission finds the Silver Tip Lateral is a non-jurisdictional gathering facility.

Background

2. Clear Fork is organized under the laws of the State of Delaware, with its principal place of business in Woodlands, Texas. Clear Fork is authorized to conduct business as a foreign corporation in the State of Wyoming. Clear Fork provides gathering and related services for natural gas and the transportation of crude oil, but does not own or operate any facilities in interstate commerce that are subject to the Commission's NGA jurisdiction. Clear Fork is an indirect, wholly owned subsidiary of Anadarko Petroleum Corporation, an independent oil and gas exploration and production company.

3. The pipeline facility at issue is a 5.3-mile lateral with a 4" diameter. The pipeline originates in Section 33, Township 58N, Range 100W of Park County, Wyoming, and ends at the Elk Basin Plant, a gas processing plant located in Park County, Wyoming. In a Purchase and Sale Agreement dated July 1, 2002, Clear Fork purchased the Silver Tip Lateral from Colorado Interstate Gas Company (CIG). Clear Fork states that CIG sold the Silver Tip Lateral pursuant to its Part 157, Subpart F, blanket certificate, which provides for certain abandonments under Section 157.216 of the Commission's blanket certificate regulations.

¹ 18 C.F.R. § 385.207 (2003).

4. The Silver Tip Lateral is currently idle. Clear Fork states that, upon determination by the Commission that the lateral is not subject to Commission jurisdiction pursuant to Section 1(b) of the Natural Gas Act, it intends to place it back in service. Clear Fork will integrate the facility into its existing gathering system, which feeds gas into the Elk Basin Plant for treatment and processing. Clear Fork's existing gathering facilities are located in Park County, Wyoming, and Carbon County, Montana, and include twenty miles of gathering lines ranging from 3" to 8" in diameter. Clear Fork expects additional wells to be drilled in the vicinity of the Silver Tip Lateral.

Notice and Interventions

5. Notice of Clear Fork's application was issued on June 4, 2003. Interventions and protests were due June 19, 2003. Timely unopposed motions to intervene are granted pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2003)). No motions to intervene or protests were filed.

Discussion

6. Clear Fork asks the Commission to declare that the Silver Tip Lateral will be a non-jurisdictional gathering facility if operated as described in its petition.

7. Under NGA Section 1(b), the Commission has jurisdiction to regulate the transportation and sale for resale of natural gas in interstate commerce and any natural gas company engaged in that transportation or sale. Section 1(b) states, however, that the Commission's jurisdiction does not extend to facilities used for the production or gathering of natural gas. Because the NGA does not further define gathering, the Commission considers criteria articulated in Farmland Industries, Inc. (Farmland),² as modified in Amerada Hess Corporation, et al.³

8. In Farmland, the Commission enumerated several physical and geographic factors to be considered in determining the primary function of a facility. These factors include: (1) the length and diameter of the line; (2) the extension of the facility beyond the central point in the field (which may or may not apply to the configuration of every set of facilities); (3) the facility's geographic configuration; (4) the location of compressors and processing plants; (5) the location of wells along all or part of the facility; and (6) the operating pressure of the line. The Commission will also give consideration to other, secondary, non-physical factors, such as Clear Fork's representation that it operates an existing gathering system and neither owns nor operates any jurisdictional facilities.

² 23 FERC ¶ 61,063 (1983).

³ 52 FERC ¶ 61,268 (1990).

9. Based on Clear Fork's representations regarding the Silver Tap Lateral and application of the modified primary function test, we find that the facility's primary function will be gathering upon integration into Clear Fork's existing gathering system and therefore will be exempt from the Commission's jurisdiction pursuant to NGA Section 1(b).

A. Length and Diameter of the Pipeline

10. The length and diameter of the Silver Tip Lateral is consistent with the conclusion that it is primarily a gathering facility. The pipeline has a 4" diameter and is 5.3 miles long. The pipeline is located behind the Elk Basin Plant where gas transported by the pipeline will be processed. Small diameter pipe or short length has in the past been viewed by the Commission as an important factor in characterizing a facility as gathering.⁴

B. Extension of the Facility beyond a Central Point in the Field

11. The Silver Tip Lateral is located in a producing area and serves as the point of collection for natural gas production from existing wells located upstream of the Elk Basin processing plant. Clear Fork will incorporate the facility into its existing gathering system and use it as an integral part of the system to gather natural gas to the Elk Basin Plant for processing. The Silver Tip Lateral does not extend beyond any identifiable central point in the field. Therefore, the facility's location is not inconsistent with a gathering function.

C. Geographic Configuration of Facilities

12. Clear Fork will integrate the Silver Tip Lateral with Clear Fork's existing gathering system, which reflects a web-like configuration of non-jurisdictional gas gathering lines located upstream from the Elk Basin Plant where gas is processed. Upon incorporation of the lateral into the existing web of gathering lines, Clear Fork will use the facility to gather some of the gas currently being gathered by other lines and to gather gas from new wells that Clear Fork expects to be drilled near the line. The physical configuration of Clear Fork's existing gathering system and the described integration of the Silver Tip Lateral is indicative that the primary function of the subject lateral also will be gathering.

⁴ See, e.g., *Tex-Con Gas Pipeline Company*, 53 FERC ¶ 61,316 (1990).

D. Location of Compressors and Processing Plants

13. The Silver Tip Lateral will be used to gather natural gas from wells in the Elk Basin field. Gas transported by the Silver Tip Lateral will enter the Elk Basin Plant for processing and treatment. There are no compression facilities on the Silver Tip Lateral. Once gas leaves the Elk Basin processing plant it enters into jurisdictional transmission lines. These findings also support a determination that the Silver Tip Lateral's primary function is gathering.

E. Operating Pressure of the Line

14. Clear Fork's application indicates that the Silver Tip Lateral is operated at less than typical pipeline transmission pressure, which indicates a gathering function. There are no compression facilities on the Silver Tip Lateral.

F. Location of Wells along the Facility

15. The Silver Tip Lateral will be used to collect the associated gas production from producing oil wells and will transport the gas to the Elk Basin Plant for treatment. Clear Fork also expects to use the line to gather gas from new wells to be drilled near the line. The location of the lateral along existing wells and potential new wells is indicative of a gathering function.

16. Based on the application of the Commission's primary function test and Clear Fork's description and representations regarding the Silver Tip Lateral, the Commission finds that Clear Fork will use the facility so that its primary function is gathering. Therefore, the Commission finds that the Silver Tip Lateral is exempt from the jurisdiction of the Commission pursuant to NGA Section 1(b).

The Commission Orders:

Clear Fork's requested declaratory order is granted based on the Commission's finding that the primary function of the Silver Tip lateral is gathering and the facility therefore is exempt from the Commission's NGA jurisdiction pursuant to Section 1(b) of the NGA.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

